THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RALPH-PETER HEGLER
and WILHELM HEGLER

_____

Appeal No. 98-0676
Application 08/308,592[1]

_____

ON BRIEF

_____

Before CALVERT, MEISTER, and FRANKFORT, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

DECISION ON APPEAL

[1] Application for patent filed September 19, 1994.

Ralph-Peter Hegler and Wilhelm Hegler (the appellants) appeal from the final rejection of claims 1, 2 and 5-10, the only claims remaining in the application.[2]

We REVERSE.

The appellants' invention pertains to a corrugated pipe slot cutting apparatus. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof may be found in APPENDIX I of the brief.[3]

The references relied on by the examiner are:

Hoffman	2,980,434	Apr. 18, 1961
Maroschak	3,916,763	Nov. 4, 1975
Hopf (French publication)	2,306,813[4]	Nov. 5, 1976

Claims 1, 2 and 5-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hopf in view of Maroschak and Hoffman. According to the examiner Hopf teaches

> a first group of holding and centering levers 38,39, a second group of holding and centering levers

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[2] Claims 1, 5, 6, 8 and 10 have been amended subsequent to final rejection.

[3] Reference in this decision to "the brief" is to the "SECOND AMENDED APPEAL BRIEF" filed on June 13, 1997 (Paper No. 16).

[4] Translation attached.

> 40,41, said first and second group of levers appears to
> enclose a corrugated pipe 4 by more than 180 degrees, a group of conveying levers 6 . . . .
> [Final rejection, page 5.]

Thereafter, the examiner concludes that it would have been obvious to (1) provide the tube slotting device of Hopf with a duct or guide in view of the teachings of Maroschak and (2) substitute in Hopf, as modified by Maroschak, for the first and second groups of holding and centering "levers" and conveying "levers," the holding and pivoting levers as taught by Hoffman in Figs. 1 and 7-10. As to the provision of "at least one stop lever" in independent claim 1, the final rejection states that

> the stop lever(s) is disclosed as another holding lever. Therefore, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Hopf with at least one stop (holding) lever in order to provide a better held and centered support for the front end of the pipe while the pipe is being conveyed and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.
> [Page 6, citation omitted.]

We will not support the examiner's position. We agree with the examiner that it would have been obvious to provide the tube slotting device of Hopf with a duct or guide in view

of the teachings of Maroschak. Additionally, while we do not agree with the examiner that the rectilinearly movable clamps 38,39,40,41 of Hopf are "levers," we nevertheless agree with the examiner that it would have been obvious to substitute in Hopf for the clamps 38,39,40,41, clamps of the pivotally mounted lever type as shown by Hoffman in Figs. 1 and 7-10. We cannot agree, however, with either the examiner's (1) finding that the element 6 of Hopf comprises a "group of conveying levers" or (2) conclusion that it would have been obvious to provide the conveying structure 6,7 of Hopf with clamps of the pivotally mounted lever type as taught by Hoffman. The element 6 of Hopf is described in the translation as a "pin" (translation, pages 6 and 7) and it is simply not clear from the showing in Fig. 1 exactly how the pipe 4 is engaged by element 6 (although it might be inferred that portion of the member 6 nearest the pipe somehow engages and grips the interior of the pipe). In any event, there is simply nothing in the combined teachings of the relied on references which would fairly suggest providing the conveying structure 6,7 of Hopf with clamps of the pivotally mounted lever type as shown by Hoffman in Figs. 1 and 7-10 as the

examiner has proposed.

We further cannot agree that the claimed stop lever is simply "another holding lever" which can, as an "obvious matter" be simply "duplicated" as the examiner contends. The claimed first, second and third groups of levers all have clamping

segments 44 thereon which function to clamp and hold the pipe. The stop lever, however, is set forth in independent claim 1 as:

> at least one stop lever (42), which is supported on the conveying carriage (15) to be movable from a position of contact with an annular elevation (36) on the downstream end of the corrugated pipe (33) to a position of release from the corrugated pipe (33) and which in the position of contact adjusts an initial position of the pipe with respect to the direction of the axis (8).

The function of this stop lever is described on page 10 of the specification in the following manner:

> Now a pipe 33, with its spigot 34 ahead, is pushed through the pipe guiding socket 31 and then through the pipe guiding socket 32 in the direction of production 11 until the first annular elevation 36 of the pipe 33 comes to bear against the stop segments 45 of the stop levers 42. This is where the pushing motion is being stopped. The pipe 33 has taken its position referred to the direction of the axis 8. A signal of the sensor 44c confirms the

> correct axial and radial initial position of the pipe 33, enabling the subsequent operations.

From the above, it is readily apparent the claimed stop lever performs an entirely different function than that of the first, second and third groups of holding levers. That is, the claimed stop lever functions as a work stop abutment to initially position the work relative to the slot cutting device in an axial direction, rather than simply being "another holding lever" which can obviously be duplicated as the examiner suggests. Indeed, there is neither reason nor need for such a stop lever in the device of Hopf since the pipe is simply pulled through the slot cutting device in increments determined by the conveying structure (rather than being pushed into the slot cutting device a predetermined amount which is determined by the work stop abutment (i.e., stop lever)).

The decision of the examiner to reject claims 1, 2 and 5-10 under 35 U.S.C. § 103 based on the combined teachings of Hopf, Maroschak and Hoffman is reversed.

REVERSED

Ian A. Calvert Administrative Patent Judge	)	
James M. Meister Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
Charles E. Frankfort Administrative Patent Judge	)	

tdc

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Application No. 08/308,592

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